

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ILLINOIS
BENTON DIVISION**

DON E. PROSSER, TRUSTEE OF THE RADER
LAND TRUST, No. 71-11, dated July 31, 1989,

Plaintiff,

v.

Case No. 13-200-JPG/SCW

GLOBAL TOWER, LLC, doing business
as Global Tower Partners, LLC,

Defendant.

**RESPONSE OF GLOBAL TOWER, LLC TO PLAINTIFF'S
MOTION FOR VOLUNTARY DISMISSAL AND GLOBAL TOWER'S
REQUEST TO COMPEL DISCOVERY RESPONSES
AND FOR OTHER AFFIRMATIVE RELIEF**

Now comes GLOBAL TOWER, LLC, doing business as Global Tower Partners, LLC, by its attorneys, Howard & Howard Attorneys PLLC, and for its Response to Plaintiff's Motion For Voluntary Dismissal and Request For an Order Compelling Responses to Defendant's Second set of Combined Discovery Request and For Other Affirmative Relief, states as follows:

1. Global Tower's Cellular Communications Tower has been located on the property which is the subject of this litigation since 1951.

2. It was not until September 7, 2012 that Global Tower, LLC doing business as Global Tower Partners, LLC ("Global Towers") knew of any dispute regarding its continued use of the Communications Tower. See Affidavit of Thomas W. O'Neal, **Exhibit 9**-September 7, 2012 letter of Don E Prosser to Global Tower.

3. This litigation is based solely on the claims made by Rader Land Trust in that September 7 letter. Rader Land Trust chose to pursue this litigation and has done so since January 28, 2013.

4. After Plaintiff and this Court were informed of Global Tower's intention to file a Motion for Summary Judgment and further, after Plaintiff agreed to a timeline for completing the discovery necessary to file that Motion for Summary Judgment, Plaintiff filed its Motion For Voluntary Dismissal in this case.

5. Global Tower acknowledges the significant health setbacks of Plaintiff's lead counsel. However, in the judgment of Global Tower, the remaining discovery to be completed by Plaintiff is not complicated or time consuming and does not require a resolution of novel questions of law.

6. For each of the foregoing reasons and those stated in the Memorandum filed with this Motion, Global Tower submits that voluntary dismissal of this matter without prejudice would not be proper under F. R. Civ. P. 41 (a) (2).

WHEREFORE Defendant Global Tower, LLC, doing business as Global Tower Partners, LLC requests:

- A. Denial of Plaintiff's Motion for Voluntary Dismissal without prejudice.
- B. An Order requiring Plaintiff to respond to the Second Set of Combined Discovery Requests served by Global Tower upon Rader Land Trust on June 6, 2013.
- C. Entry of an Order deeming admitted Global Tower's Request for Admission Number 11 as set forth in Defendant's Second Set of Combined Discovery Requests.
- D. Entry of discovery scheduling order to allow Global Tower to file its Motion For Summary Judgment prior to October 30, 2013.
- E. In the alternative to the foregoing, entry of an Order dismissing Plaintiff's Complaint with prejudice.
- F. That this Court grant such other and further relief as it deems just.

GLOBAL TOWER, LLC, doing business as
Global Tower Partners

By: /s/ Thomas W. O'Neal
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 19, 2013 the foregoing document was filed with the Clerk of the United States District Court for the Southern District of Illinois (Benton Division) through its Electronic Filing System and was served upon all counsel of record through that system.

/s/Thomas W. O'Neal
Thomas W. O'Neal